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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,730	09/25/2003	Rod Ross	MO06009C1	9438
<div>7590      01/08/2008</div> <div>MED-LOGICS, Inc. 26061 Merit Circle, Suite 102 Laguna Hills, CA 92653</div>				
			<div>EXAMINER</div> <div>NGUYEN, VI X</div>	
			<div>ART UNIT</div> <div>3734</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE</div> <div>01/08/2008</div>	<div>DELIVERY MODE</div> <div>PAPER</div>

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/672,730

Applicant(s)

ROSS ET AL.

Examiner

Victor X. Nguyen

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 6-8, 14, 37-40 and 44-69 is/are pending in the application.
- 4a) Of the above claim(s) 6-8, 14 and 37-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 44-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. The request filed on 10/19/2007 for Continued Examination (RCE) under 37 CFR 1.114 based on parent Application No. 10/672,730 is acceptable and a RCE has been established. An action on the RCE follows.

#### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 44-69 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification (**submitted on 9/25/2003**) in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In **claims 44 and 67**, the disclosure does not describe “the blade holder frictionally engaging the rear edge **by an amount adjustable along the first direction**, where the blade holder reference surface is positioned at an adjustable distance from the cutting edge along the first direction.” In **claim 46**, the disclosure does not describe “a third inside edge interposed between the first inside edge and the second inside edge, and the blade holder frictionally engages the first inside edge and the second inside edge. In **claim 55**, the disclosure does not describe “the blade holder being pressed into frictional engagement with the rear edge **by an amount adjustable along the first direction**, where the blade holder reference surface is positioned at an adjustable distance from the cutting edge along the first direction and the

**blade holder reference surface is configured to contact the inner cavity reference surface when the blade assembly is loaded in the inner cavity".** In **claim 57**, the disclosure does not describe "a third inside edge interposed between the first inside edge and the second inside edge". In **claim 60**, the disclosure does not describe "a blade holder including a thickness, a slot formed into the thickness". In **claim 63**, the disclosure does not describe "wherein the finger has an area, a thickness perpendicular to the area, and a finger edge extend along the direction of the thickness, and the finger edge frictionally engages the slot".

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 44,45,47,49,53-56,60-62,64,66 and 68-69 are rejected under 35 U.S.C. 102(e) as being anticipated by Dybbs (6,228,099).

Dybbs discloses a blade assembly that can be assembled into a microkeratome, including: a blade (98) has a cutting edge (102) along a first direction(the first direction occurs along the segment of 102), a rear edge (see attached figure where all yellow mark is characterized as a rear edge, the rear edge has a notch at the opening of blade 98), and a pair of side edges (occurs at either side of element 98), and a second side edge disposed at a distance from the first side edge along a second direction (the second direction occurs along the segment of element 98) where a

blade holder (96) that has a reference surface 106 and an opening 122 configured to receive a pin 135 of the microkeratome, where the blade holder frictionally engaging the rear edge by an amount adjustable along the first direction, where the blade holder reference surface is positioned at an adjustable distance from the cutting edge along the first direction (a functional limitation): thus, a reference needs not show the structure of the recitation in order to meet the claim language but rather the reference needs only be capable of being used with such structure. Accordingly, the reference is considered to read on the claimed limitation of the claimed noted, and where the blade can pivot relative to the blade holder, and where the blade holder also has an outer groove (fig.4), and where the blade holder includes a tapered top surface (see fig.3) and an opening is formed (at 138) in the tapered top surface.

#### ***Response to Arguments***

4. Applicant's remarks filed 10/19/2007 have been fully considered but they are not persuasive. Regarding to new claims 44-69, applicant is asked to please refer to the modified prior art rejections above where examiner addresses applicant's concerns regarding the new limitations.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number:  
10/672,730  
Art Unit: 3734

Page 5

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victor X Nguyen  
Examiner  
Art Unit 3734



VN *✓*  
12/31/2007



MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER

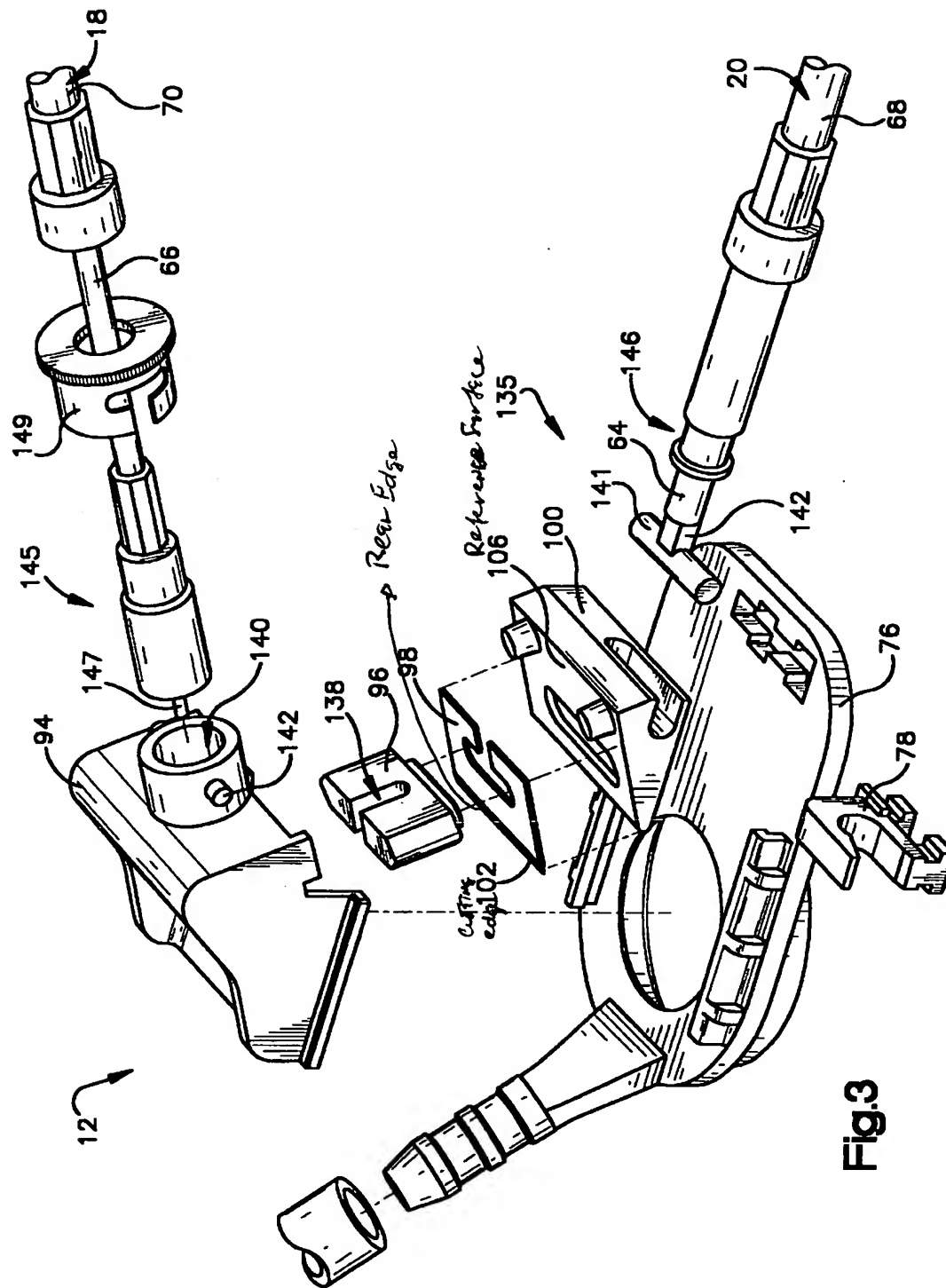


Fig.3